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In the Supreme Court of the United States

OCTOBER TERM, 1967

HUEY P. MEAUX and CHARLIE BOOTH, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,

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Assistant Attorney General,

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OPINION BELOW

The opinion of the court of appeals is reported at 387 F.2d 370 (Pet. App. A).

JURISDICTION

The judgment of the court of appeals was entered on January 4, 1968. A petition for rehearing was denied on February 7, 1968. The petition for a writ of certiorari was filed on March 4, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the closing argument of government counsel deprived petitioners of a fair trial.

2. Whether petitioners were denied the effective assistance of counsel.

STATEMENT

After a trial by jury in the United States District Court for the Southern District of Texas petitioners Booth and Meaux [1] were convicted of conspiring to violate the Mann Act (18 U.S.C. 2421). On January 27, 1967, each was sentenced to three years' imprisonment. The court of appeals affirmed (Pet. App. A).

The government's case was developed primarily through the testimony of Lynda Puckett. She had met co-defendant Bergen in the latter part of August 1965 when she was fifteen, and through him was introduced to petitioners. In mid-September, Bergen and petitioners discussed with Miss Puckett the possibility of her accompanying them to a country music convention in Nashville, Tennessee. Although she was to be referred to as a "promotional assistant," [2] she was advised that her primary function would be to have sexual relations with business contacts of petitioners. (R. 18-24, 27.) Miss Puckett was to receive

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[1] Petitioners were indicted together with Thomas Bergen and one Garris. Bergen pleaded guilty prior to trial (R. 10-12) and Garris' case was severed (R. 7).

[2] A contract was drawn up setting forth that Miss Puckett was to be a singer, in case any law enforcement officers should happen to question her presence with the men (R. 29).

approximately $100 per night (a portion of which would go to Bergen) payable in a lump sum at the termination of the convention (R. 27, 29, 39).[3]

In mid-October, Miss Puckett, Bergen and Booth drove from Texas to Nashville, Tennessee[4] (R. 30-31). En route Booth unsuccessfully tried to rape her in the rear seat of the car (R. 33-37). On their arrival, they checked in at the Capitol Park Motel where rooms had already been reserved for them (R. 24, 39). While at the convention, Miss Puckett was directed by Meaux and co-defendant Garris to have sexual relations with several men; she thereafter engaged in sexual intercourse with a man named Regan and several other persons (R. 40-50, 52, 212-213). At the conclusion of the convention, she was given $100 for her services by petitioner Meaux (R. 54).

Bergen corroborated Miss Puckett's version of the events in all pertinent details (R. 541-579). The manager of the Capitol Park Motel testified that petitioners, Garris, Bergen, Miss Puckett, as well as those with whom it was alleged Miss Puckett had relations, had resided at the motel on the relevant dates (R. 229-234).

Each petitioner denied having any carnal knowledge of Miss Puckett or having arranged for her to

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[3] Before departing on the trip Miss Puckett purchased under the name "Mrs. Bergen" a large quantity of birth control pills (R. 54-55). The woman who sold her the pills corroborated this testimony (R. 222-224).

[4] Although there had been some previous discussion about Miss Puckett walking across the state lines, in order to avoid prosecution under the Mann Act, she was in fact driven across the lines (R. 38).

have sexual relations with any of his acquainances at the convention (R. 291, 299-300, 304-305, 336-337, 466-467, 478-481, 485). They testified that Bergen had brought Miss Puckett to Nashville because she was his girl friend, not because of any illicit scheme (R. 289-290, 294-295, 469-470). Mr. Regan testified for the defense that he had not had sexual relations with Miss Puckett (R. 364, 366).

ARGUMENT

1. In the course of his closing argument, government counsel made the following remarks—the italicized portion of which petitioners complained of in the court below:

> May it please the Court, Mr. Much, *Gentlemen of the Jury, it is my duty now as your public servant to close the argument for the United States of America.*
>
> *I welcome this duty because I enjoy my job, working for you people.* [R. 790-791.]
>
> * * * *
>
> That's all I have got to say. You have heard these people testify and you have seen the cross-examination, and you determine who you want to believe. It's not up to me and it's not what I say. *I am just your public servant and it is not up to the F.B.I. to determine it. It's up to you, and whether or not you enforce the law depends upon your verdict in this case. You could turn these men loose and if you do I guarantee you it will continue,* their activities like this and what others we have heard about, *but I assure you, if your verdict is guilty,* and I say that the evidence

> is sufficient to uphold this verdict, *you might be surprised at the good it will do right here in this community.* It will be heard in this courtroom by people that it will have an impact upon, and it will be in newspapers, and there will be people who read about it and if we can do some good in this realm, and especially in the teen-age realm, we have done something to be proud of.
>
> That's all I'm asking you to do, to uphold the law as your conscience dictates. [R. 799-800.]

These remarks—to which no objection was made—followed an extensive summary of the government's evidence and were made in an effort to counter defense counsel's attack on the credibility of the government's chief witnesses and his attempt to impugn the motives of the government in calling the witnesses, and its honesty in dealing with the witnesses and the jury. In these circumstances, the closing argument of the government was within permissible bounds.

2. At the opening of the trial, petitioner's retained counsel, Mr. Much, requested the court to permit his co-counsel, Mr. Scott, to practice before the court *pro hac vice*. The court, after being informed that Mr. Scott had resigned from practice before the district court several years earlier—apparently under a cloud—and after consulting with the judge before whom the resignation occurred, denied counsel's request (R. 4-7). In the circumstances, there was no abuse of the trial judge's discretion in not admitting Mr. Scott to participate.

The record does not support petitioners' attack on the adequacy of defense counsel. Mr. Much interposed numerous objections which were sustained (see, *e.g.*,

R. 133, 144, 167, 176, 181, 204, 380-386), thereby evidencing an adequate understanding of the rules of evidence. He cross-examined the government's witnesses exhaustively (R. 57-205, 215-218, 584-688). In an effort to rebut the government's case, defense counsel placed petitioners, as well as other witnesses, on the stand. In his closing argument to the jury, counsel sought to cast doubt on the reliability and sufficiency of the government's evidence. That other counsel, on combing the record, finds basis for some objections to testimony,[5] or might have employed a different strategy in defending petitioners, is not determinative. See *Johnson* v. *United States*, 362 F.2d 43, 47 (C.A. 8).

[5] Petitioner's assertion that counsel was remiss in not entering an objection to several specified matters is without merit. The admission of evidence relating to the attempted rape of Miss Puckett and her commission of oral sodomy was proper, since petitioner had been charged with transporting the victim for prostitution "and other immoral purposes." The reference to petitioners' taking pills was a neutral one. Any adverse implication was dispelled through testimony that the pills were either vitamins or appetite appeasers (R. 303, 399-401). Although testimony concerning a gun was not objected to, direct examination of Booth elicited the testimony that the gun was a toy pistol left in the car by Booth's nephew (R. 300-301).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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